

# Office of Government Ethics: Role in Collecting and Making Ethics Waivers Public

June 19, 2017

On April 28, 2017, the [Office of Government Ethics](#) (OGE) issued a program advisory ([PA-17-02](#)) to request data on the issuance of certain waivers and authorizations from executive branch agencies, including the Executive Office of the President (EOP). OGE requested documentation for all waivers given to executive branch appointees between May 1, 2016, and April 30, 2017, under five authorities: [Executive Order \(E.O.\) 13770](#), [E.O. 13490](#), [18 U.S.C. §208\(b\)\(1\)](#), [5 C.F.R. §2635.502\(d\)](#), and [5 C.F.R. §2635.503\(c\)](#). The data were due to OGE by June 1, 2017. [One hundred thirty five of 136 executive branch agencies](#), and also the EOP and the Office of the Vice President, either provided OGE data or released data on their websites.

## OGE Authority

Pursuant to the [Ethics in Government Act](#), OGE is vested with providing “[overall direction of executive branch policies related to preventing conflicts of interest](#).” In this role, OGE works to ensure that conflicts of interest are mitigated and that the integrity of the executive branch and its employees is maintained. Additionally, OGE periodically issues [regulations \(5 C.F.R. §§2600-2699\)](#) and is required to interpret and provide guidance for [E.O. 13770](#), President Trump’s ethics pledge.

## Waiver Provisions

OGE requested data on waivers issued under five authorities. These authorities are as follows:

- [Executive Order 13770](#) was issued by President Donald J. Trump on January 28, 2017. E.O. 13770 revoked and replaced a similar order issued by President Obama, creating a new ethics pledge for executive branch appointments made on or after January 20, 2017. The President or his designee can issue waivers to E.O. 13770. On May 31, 2017, the White House released [a list of waiver certifications](#) for the White House Office, a component of the EOP.
- [Executive Order 13490](#) was issued by President Barack Obama on January 21, 2009. E.O. 13490 created an ethics pledge for all executive branch appointments made on or after January 20, 2009. The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, could issue waivers to E.O. 13490. Waivers issued under E.O. 13490 were posted by OGE to its [website](#).

- 18 U.S.C. §208(b)(1) is the [waiver](#) provision of [18 U.S.C. §208](#), “the basic criminal conflict of interest statute,” which “prohibits an executive branch employee from participating personally and substantially in a particular Government matter that will affect his own financial interests.”
- 5 C.F.R. §2635.502(d) is the waiver provision of [5 C.F.R. §2635.502](#). It allows an agency to authorize an employee to participate in a particular matter “where an employee’s participation ... would not violate 18 U.S.C. §208(a), but would raise a question in the mind of a reasonable person about his impartiality.”
- 5 C.F.R. §2635.503(c) is the waiver provision of [5 C.F.R. §2635.503](#). It covers employees who receive “[extraordinary payments](#)” from former employers—payments in excess of \$10,000 from a former employer prior to the employee entering federal service. That employee would then be barred “from participating for two years in matters in which that former employer is a party or represents a party.”

For a legal analysis of ethics issues for individuals entering government, see CRS Report RL31822, *Entering the Executive Branch of Government: Potential Conflicts of Interest with Previous Employments and Affiliations*, coordinated by Cynthia Brown.

## Waiver Data

On June 7, 2017, OGE released data on the number of waivers issued by executive branch agencies between May 1, 2016, and April 30, 2017. OGE reported that 135 of 136 executive branch agencies responded to the data request (the Harry S. Truman Scholarship Foundation reportedly did not respond). Additionally, the White House posted E.O. 13770 waiver information on its website for the EOP and the Office of the Vice President. Of the 136 total responding agencies, 126 agencies reported that they did not provide any waivers, and 10 agencies issued at least one waiver. **Table 1** reports the agencies that issued waivers and the number of each type of waiver issued. Data for the White House may not be readily comparable across administrations, given that the data span the end of the Obama Administration and the beginning of the Trump Administration, and also cover different time durations.

**Table 1. Executive Branch Ethics Waivers Issued Between May 1, 2016, and April 30, 2017**

Agency	E.O. 13770	E.O. 13490	18 U.S.C. §208(b)(1)	5 C.F.R. §2635.503(c)	5 C.F.R. §2635.502(d)
Department of Health and Human Services	1	0	1	0	4
Department of Homeland Security	1	0	0	0	1
Department of Justice <sup>a</sup>	0	4	1	0	13
Department of State	1	1	1	0	6
Department of the Treasury	2	0	0	0	3
Peace Corps	0	0	0	0	2
Securities and Exchange Commission	0	0	0	0	2
White House Total	8	0	5	1	2
White House (Obama)	N/A	0	1	0	0
White House, including Office of the Vice President (Trump) <sup>b</sup>	8	N/A	4	1	2

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<b>Total</b>	<b>13</b>	<b>5</b>	<b>8</b>	<b>1</b>	<b>33</b>
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**Source:** CRS analysis of Office of Government Ethics (OGE), “[Certain Waivers and Authorizations issued between May 1, 2016-April 30, 2017](#)”; and U.S. President (Trump), “[Waiver Certification for WHO/OVP Employees](#).”

**Notes:** Waivers provided by President Obama’s White House include only those issued between May 1, 2016, and January 20, 2017. Consequently, this table does not provide a complete list of waivers issued by President Obama to White House staff. For a full list of Obama White House waivers granted pursuant to E.O. 13490, see [OGE’s page on Executive Branch Agency Ethics Pledge Waivers](#).

- a. One authorization/waiver issued by the Department of Justice was issued for two people.
- b. The White House also reported that waivers to E.O. 13770, paragraph 6, were provided to all EOP appointees, all White House Office (WHO) employees, and all former Jones Day employees working in the executive branch. Paragraph 6 reads, “I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contacts.”

To access copies of specific waivers, see [OGE’s web page](#) for instructions.

For more information on OGE, see CRS In Focus IF10634, *Office of Government Ethics: A Primer*, by Jacob R. Straus.

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